

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOHN GRANGER,

Plaintiff,

Civ. Action No. 07-CV-3491(PKC)

- against -

GILL ABSTRACT CORPORATION and NAN  
GILL,

Defendants.

**AFFIDAVIT OF DREW DISKIN**

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STATE OF NEW YORK )  
                        )ss.:  
COUNTY OF NEW YORK )

Drew Diskin, being duly sworn, deposes and says:

1. I am the managing member of Inertia, LLC (“Inertia”), located at 619 Charles Court, River Dale, N.J. 07675 and was Defendant Gill Abstract Corporation’s website administrator from 2005 through to March 2006. Accordingly, I have personal knowledge of the facts set forth herein. I respectfully submit this affidavit in opposition to Plaintiff John Granger’s (“Plaintiff” or “Granger”) motion for summary judgment and in support of Defendant Nan Gill (“Gill”) and Gill Abstract Corp.’s (“Abstract”) (collectively “Defendants”) cross motion for summary judgment.

2. In short, it is undisputable that Plaintiff’s title insurance rate calculator (the “Rate Calculator”) was removed from Abstract’s website several months before June 30, 2006 registration was granted. Accordingly, Plaintiff’s claims are all without merit, and

Plaintiff's complaint must be stricken. At the very least, Plaintiff's damages if any must be limited to actual damages.

3. Inertia provides freelance administrative web services for the web, including Abstract's website.

4. Upon information and belief Abstract is a title company and is engaged in the business of providing a range of title services to the general public, including but not limited to, the sale of title and mortgage insurance. Abstract's website address is [www.gillabstract.com](http://www.gillabstract.com) (the "Website").

5. On or about February, 17 2006, I received a letter from Plaintiff dated February 13, 2006, claiming that the Rate Calculator on Abstract's website was copyrighted.

6. I immediately contacted Ms. Nan Gill of Gill Abstract received instructions to immediately remove the Rate Calculator from the Website. Accordingly, on or about February 21, 2006, I removed the Rate Calculator from the Website, a fact which I communicated by email to her. A copy of my email correspondence dated February 21, 2006 to Ms. Gill is attached hereto as Exhibit "A."

7. I was also advised by Ms. Gill and Mr. Sal Cimaglia ("Mr. Cimaglia") of SK Consulting, that Mr. Cimaglia would be providing a new title insurance and mortgage rate calculator for the Website.

8. On or about February 21, 2006, I placed the new title insurance and mortgage rate calculator link provided by Mr. Cimaglia on Abstract's website. I checked Abstract's website myself and confirmed that the Rate Calculator had been removed and that it had been replaced with a new rate calculator.

9. I promptly ensured that the Rate Calculator was removed from the Website on February 21, 2006 (See correspondence attached hereto as Exhibit "A") and was replaced by another mortgage rate and title insurance calculator and confirmed that this was done as instructed without any contractual obligation to do so. This fact is also confirmed by the records of the internet archive "The Wayback Machine."

10. The Wayback Machine located on the world wide web at <http://www.archive.org/index.php> is a trusted and respected service that allows people to visit archived versions of web sites. Visitors to the Wayback Machine can type in a URL, select a date range, and then begin surfing on an archived version of the Web. Accordingly, using the Wayback Machine it is easy to prove the content of the Website before and after February 21, 2006.

11. Attached hereto as Exhibit "B" is a printout from the Wayback Machine illustrating all changes to the Website. As the court can see, the Wayback Machine documented that Gill Abstract's website was updated on or about March 5, 2006.<sup>1</sup>

12. Attached hereto as Exhibit "C" is the archived imagine of the Website as of March 5, 2006. When one clicks on the link to the rate calculator on this March 5, 2006 date, or any other date thereafter, the website user is referred to the title insurance rate calculator provided by Mr. Cigmalia – **NOT JOHN GRANGER'S TITLE INSURANCE RATE CALCULATOR.**

13. Moreover, as stated above, there was no material belonging to John Granger on the Website at any time after the June 30 Registration Date.

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<sup>1</sup> Since the WayBack Machine website does not update daily, even though the Website was updated on February 21, 2006, this change was not recorded until March 5, 2006 – a date well before John Granger's June 30, 2006 registration date.

14. Accordingly, it is undisputable that the Rate Calculator was removed from Abstract's website on or about February 21, 2006, or at the very latest on March 5, 2006. This fact is confirmed independently by the Wayback Machine. Certainly the Rate Calculator was removed from the Website well before June 30, 2006 the date of registration of the Rate Calculator.

WHEREFORE, I respectfully request that the Court deny Plaintiff's motion for summary judgment with prejudice, and grant Defendants' cross motion for summary judgment and grant Defendants the fees and costs associated with the defense of the instant motion for summary judgment.

Sworn to before me on this 18TH  
day of October 2007.

David J. Tumminello  
Notary Public  
DAVID J. Tumminello  
MY COMMISSION EXPIRES  
MARCH 1, 2011

Drew Diskin  
Drew Diskin



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**From:** nangill@gillabstract.com  Add to Address Book  Add Mobile Alert

**To:** drew@drewdiskin.com

**Subject:** Re: Fw: Web Calculator for Gill Abstract

**Date:** Wed, 22 Feb 2006 02:53:41 -0500

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My Attachments

Email Fax ... (more)

Apply & Spend \$1500 ... (more)

FICO above 680?  
5.4%\* Refi Rate

Graduate Online under 1.5 yrs!

Thank you  
N  
----- Original Message -----  
From: <drew@drewdiskin.com>  
To: <nangill@gillabstract.com>  
Sent: Tuesday, February 21, 2006 9:50 PM  
Subject: Re: Fw: Web Calculator for Gill Abstract

>  
> Updated.  
>  
> Drew  
>  
>  
>  
>> Drew  
>> Please get this one up as quickly as possible and the other one off.  
>> Thank you,  
>> Nan  
>> ----- Original Message -----  
>> From: SKCC@aol.com  
>> To: nangill@gillabstract.com  
>> Cc: drew@drewdiskin.com  
>> Sent: Tuesday, February 21, 2006 1:25 PM  
>> Subject: Re: Web Calculator for Gill Abstract  
>>  
>> Nan/Drew  
>> The link for the web calculator is up and running. You can now connect  
>> the URL which is  
>> www.accuratespda.gillabstract.swf to your website and it will work.  
>> If any questions, call me at 914-760-0922  
>> Take care

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**From:** nangill@gillabstract.com [Add to Address Book](#) [Add Mobile Alert](#)

**To:** SKCC@aol.com

**CC:** drew@drewdiskin.com

**Subject:** Re: Web Calculator for Gill Abstract

**Date:** Mon, 20 Feb 2006 12:33:18 -0500

Thanks Sal,  
Just let Drew know also so he can link it.  
Nan

----- Original Message -----  
**From:** SKCC@aol.com  
**To:** nangill@gillabstract.com  
**Cc:** drew@drewdiskin.com  
**Sent:** Monday, February 20, 2006 8:30 AM  
**Subject:** Re: Web Calculator for Gill Abstract

Nan  
You will not be able to view what the calculator looks like till sometime tomorrow, Tuesday. I will email you when it is up, then you can look at it and let me know if you like it, then your programmer can link it immediately.  
Thanks  
Sal

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**From:** "Nan Gill" <ngill2@hvc.rr.com> [View Contact Details](#) [Add Mobile Alert](#)  
**To:** "Drew Diskin" <drewdiskin@yahoo.com>  
**Subject:** Re: rates calculator  
**Date:** Sun, 19 Feb 2006 20:45:49 -0500

My thoughts are with you. I hope this ordeal is over quickly for you.  
 I will write the letter.  
 Nan

----- Original Message -----  
**From:** [Drew Diskin](#)  
**To:** [Nan Gill](#)  
**Sent:** Sunday, February 19, 2006 8:05 PM  
**Subject:** Re: rates calculator

Nan,

Thanks for the e-mail. I received a cease-and-assist letter, too, in the mail. Needless to say, I was less than thrilled. I believe you may need to rethink some of your strategies for forms and such in this regard. In the meanwhile, I would suggest that you contact the person who sent the letter, apologize for not knowing it was proprietary, and let him know that you are rectifying the situation. This would help prevent them from blacklisting you with any associations or large industry groups. You never quite know who people know...

I am scheduled to close on my new home in VA this week. Once that is finished, and I am not living in a hotel (and commuting 600 miles every weekend) I will have more time to dedicate to your sites. Thank you for your understanding.

Respectfully,  
 Drew  
 Cheers.  
 Drew

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**To:** [SKCC@aol.com](mailto:SKCC@aol.com)

**CC:** "Drew Diskin, M.S." <[drew@drewdiskin.com](mailto:drew@drewdiskin.com)>

**Subject:** Re: Web Stuff

**Date:** Sun, 19 Feb 2006 16:21:19 -0500

could not see what it looked like.  
 Please get in touch with Drew Diskin to set it up.  
 By copy of this email, I am notifying him that you will be getting in touch with him.  
 Thanks,  
 Nan

----- Original Message -----  
**From:** [SKCC@aol.com](mailto:SKCC@aol.com)  
**To:** [nangill@gillabstract.com](mailto:nangill@gillabstract.com)  
**Sent:** Sunday, February 19, 2006 2:05 PM  
**Subject:** Web Stuff

Hi Yan..... oops....NAn

Good seeing you Friday  
 My programmer did save the web calculator we did a while back for you. It will be back up next Tuesday for you to look at. If you go to [www.accuratespda.com/gillabstract.swf](http://www.accuratespda.com/gillabstract.swf) you can see what it looks like. If you want to switch over to it, just give the link above to your web programmer and tell him to place it under the rate calculator button on the website. It will work immediately. I have requested Florida rates from one source and if you happen to find your rates, email them to me. I am looking into incorporating the standard rates, but not mortgage tax and transfer tax. The charge for setting up the website if you want to go with it is \$799, then \$35 a month for all updates and upgrades including any palm and pc programs you may have. If and when we do the florida rates, there would be a minor charge for installation. I also will send you a monthly printout on how many hits the rate calculator is getting from your customers and how many different customers are hitting.....

Take care  
 Talk to you soon  
 Sal

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The screenshot shows the Wayback Machine interface with the following details:

- Header:** Internet Archive Wayback Machine - Mozilla Firefox
- Toolbar:** File Edit View History Bookmarks Tools Help
- Address Bar:** http://web.archive.org/web/\* http://www.gillabstract.com
- Search Bar:** Enter Web Address: http://
- Search Results:** Searched for http://www.gillabstract.com
- Results Table:** Shows search results for "Jan 01, 1996 - Aug 08, 2007". The table has columns for Year, Month, Day, and Page Count (0 pages, 7 pages, 13 pages, 23 pages, 73 pages, 26 pages, 31 pages, 2006, 2005, 2004, 2003, 2002, 2001). Rows represent specific dates with page counts. An asterisk (\*) indicates a site update.
- Details:** Note some duplicates are not shown. See all. \* denotes when site was updated.
- Bottom Right:** \*Crawl notes UPDATE from 2/21/06



Crawl date\*: March 5, 2006

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We have been in the abstract and title insurance business for over 20 years and have established solid relationships with other companies in the industry. Our service does not stop when the premium is paid. We follow up on post-closing items with the utmost care and produce proofs in a timely manner when your client chooses either to resell or to refinance. The speed, accuracy and completeness of our search is our highest priority.

Our expertise in title insurance, banking and real estate law uniquely qualifies us to offer our underwriters the most efficient and knowledgeable services. Providing services from our offices in Manhattan, Goshen and Northport, we are dedicated to offering the best title insurance services throughout the greater New York State area, and now in Florida with our new offices in Clearwater. New York State area, and now in Florida with our new offices in Clearwater.

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